

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/Owner: Sonya Sofield, 1339 South East Street, Amherst, MA 01002

Date application filed with the Town Clerk: July 21, 2009

Nature of request: Special Permit to renew ZBA FY2007-00039 for a flag lot and to request removal of Condition 1 regarding allowable building height, under Section 10.33 of the Zoning Bylaw

Address: South East Street (Map 23D, Parcel 57, R-O & ARP District)

Legal notice: Published on September 9 and September 16, 2009 in the Daily Hampshire Gazette and sent to abutters on September 8, 2009

Board members: Tom Simpson, Hilda Greenbaum, Albert Woodhull

Submissions:

- Project Application Report, ZBA FY2010-00002, dated September 16, 2009;
- ZBA application, filed with the Town Clerk on August 4, 2009 (submitted and received by the Planning Department on July 17, 2009);
- Flag lot plan prepared by Almer Huntly, Jr. Associates, dated July 17, 1974 and stamped approved by the Zoning Board of Appeals on June 21, 2007;
- ZBA FY2007-00039, filed with the Town Clerk on July 2, 2007;
- Topographical plan of land prepared by Almer Huntley, Jr. Associates dated July 7, 1974 and stamped approved by the Zoning Board of Appeals on June 21, 2007;
- ZBA FY1974-47, for reference, submitted by staff;
- Town GIS map showing topography, for reference, submitted by staff.

Site Visit: September 8, 2009

Tom Simpson met Sonya Sofield at the site. The following was observed:

- The location of the front of the property along the west side of South East Street in close proximity to the paved driveway that leads to the house at 1491 South East Street;
- The old, wooded access road that runs up the middle of the access strip;
- The open, grassy field covering a large portion of the flag lot, wooded areas of significantly changing topography on the west side of the lot, and, the house and solar panels on the property of 1491 South East Street to the east;
- The location of one of four surveyor stakes in a thicket of vegetation, as shown on the topographical map.

Public Hearing: September 24, 2009

Mr. Simpson disclosed that he and the applicant had served together on the Zoning Board of Appeals as recently as a few years ago and that this fact would not affect his judgment in this case.

Ms. Sofield presented the application. She stated the following:

- She seeks to renew the previous Special Permit, ZBA FY2007-00039, for a flag lot;
- She has been renewing the flag lot since its original approval in 1974;
- The permit has technically expired because the renewal request was submitted more than two (2) years after it had been filed with the Town Clerk;
- The flag lot conforms to all of the applicable requirements listed in Section 6.3 of the Zoning Bylaw;
- No site conditions have changed, and there is currently no proposal to develop the flag lot;
- The previously approved topographical map does not match the topography shown on the Town GIS;
- The petitioner requested that the Board remove Condition 1 from the previous permit, which restricts the height of any structure on the property to 102 feet, based upon the topographical survey prepared by Almer Huntly, Jr. Associates, in 1974.

The Board members determined that there were no changes to the existing site, or surrounding area, and that the flag lot conforms to the minimum requirements of Section 6.3 of the Zoning Bylaw.

The remainder of the public hearing consisted of a discussion as to whether or not the condition limiting the height of any structure should be removed. Topics of discussion included, but were not limited to, the following:

- The potential location for a dwelling, indicated by four survey stakes shown on the topographical map, one of which had been observed in a thicket of vegetation during the site visit;
- The general location and approximate height of other nearby residences, for which no evidence or information, other than a current Town GIS map and photographs prepared by staff as part of the 2007 renewal application, had been provided;
- The option for either the current owner or future applicant to request a modification of the Special Permit when there is a proposal to construct a house that may exceed the current height limitation.

Aaron Hayden, 1491 South East Street, identified himself as a friend and neighbor of the applicant and spoke against removing the condition. Mr. Hayden cited the ridgeline as a public resource and believes that a structure on the property would interrupt that. Mr. Hayden noted that there may be a circumstance where a plan could be proposed and reviewed by the Zoning Board that may be suitable, but without such a plan, he requested that the condition remain.

Ms. Greenbaum MOVED to close the evidentiary portion of the public hearing. Mr. Woodhull seconded and the Board VOTED unanimously to close the public hearing.

Public Meeting:

The Board members determined that a preliminary proposal for development would be required before removal of the condition could be properly considered. They noted that a preliminary plan would allow future Board members to review and evaluate a proposed location, height, and design of a residence and any potential aesthetic impact to the ridgeline.

The Board noted that the condition, originally established in 1974, was intended to preserve the ridgeline and that without a proposed design to consider, the condition limiting the height, should remain.

During the public meeting the Board reviewed the conditions and findings that would be appropriate if the Special Permit were to be approved.

Specific Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 - The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority. The flag lot is located in an area that contains other flag lots and is designed in accordance with all applicable requirements for flag lots found in Section 6.3 of the Zoning Bylaw.

10.381 - The proposal is compatible with existing uses and other uses permitted by right in the same District. Although no development is currently proposed, the future use of the property as a residence is compatible with the other residential uses in the area. The flag lot is located in an area that contains other flag lots and is designed in accordance with all applicable requirements for flag lots found in Section 6.3 of the Zoning Bylaw.

10.384 - Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The flag lot is located in an area that contains other flag lots and is designed in accordance with all applicable requirements for flag lots found in Section 6.3 of the Zoning Bylaw.

10.385 - The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features. The permit maintains a condition that limits the maximum height of any structures on the property. The original intent of this condition, established in 1974, was to eliminate the possibility for construction to affect the public view of the hill top and is maintained as part of this permit approval. The proposal is conditioned such that any future proposal for development shall be submitted and reviewed by the Zoning Board of Appeals at a public meeting for the Board to ensure that the plan is designed in accordance with the requirements of Section 6.3 of the Zoning Bylaw. The flag lot is conditioned to require conformance with the restrictions and requirements of Section 3.25, Aquifer Recharge Protection District. These limitations shall apply to any portion of development occurring in this district.

10.394 - The proposal avoids, to the extent feasible, impact on steep slopes, floodplains, scenic views, grade changes, and wetlands. The permit maintains a condition that limits the maximum height of any structures on the property. The original intent of this condition, established in 1974, was to eliminate the possibility for construction to affect the aesthetic of the hill top and is maintained as part of this permit approval.

10.398 - The proposal is in harmony with the general purpose and intent of this Bylaw. The flag lot conforms to all of the minimum requirements of the Zoning Bylaw. The flag lot is located within an area where flag lots are permitted by Special Permit and where other flag lots exist. Any future access established on the property shall be reviewed by the Town Engineer and presented to the Board for approval at a public meeting. Any use of the property shall comply with the requirements for the Aquifer Recharge Protection District.

Public Meeting – Zoning Board Decision

Mr. Simpson moved to APPROVE the application with the same conditions as listed in the previous permit. Mr. Woodhull seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2010-00002, for a flag lot, under Section 6.3 of the Zoning Bylaw, with the same conditions as the previous Special Permit, ZBA FY2007-00039, including condition #1, which limits the height of any future structure on the property, at South East Street (Map 23D, Parcel 57, R-O & ARP Districts).

THOMAS SIMPSON

HILDA GREENBAUM

ALBERT WOODHULL

FILED THIS _____ day of _____, 2009 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2009.

NOTICE OF DECISION mailed this _____ day of _____, 2009
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2009,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2010-00002, for a flag lot, under Section 6.3 of the Zoning Bylaw, with the same conditions as the previous Special Permit, ZBA FY2007-00039, including condition #1, which limits the height of any future structure on the property, at South East Street (Map 23D, Parcel 57, R-O & ARP Districts), as follows:

1. The following building restriction shall conform to that recited in the 1995 deed:
“the highest point of the roof of any structure built upon the land being conveyed shall not exceed [an] elevation of 102 feet, such elevation being established in reference to the topographical plan of Amherst, Massachusetts, prepared for David Sofield by Almer Huntley, Jr. and Associates, Inc., dated July 17, 1974, with all grades shown thereon based on an assumed benchmark elevation of 100.00 at sta. 306.”
2. Prior to issuance of a building permit for a residence, the following shall be submitted to the Zoning Board of Appeals for its review and approval at a business meeting:
 - A final revised site plan, including a grading and drainage plan, siting of the residence and outbuildings, site and building lighting and a plan of the driveway indicating grading and materials.
 - The soil in the vicinity of the construction area shall be tested for arsenic. The test results and a plan showing the extent of the area tested and sampling locations shall be submitted to the Board and filed in the Zoning Board of Appeals office, located in the Planning Department.
3. The siting of the house shall conform to Sections 6.34 and 6.35 of the Bylaw. That is, the building shall be constructed in the building area capable of containing a circle whose diameter is equal or greater than 150 feet.
4. The drainage plan and driveway plan must be submitted to and approved by the Town Engineer prior to submittal to the Zoning Board of Appeals.
5. The Aquifer Recharge Protection (ARP) District restrictions found in Section 3.254 of the Bylaw shall be observed on the access pole section of the property. This includes, but is not limited to, a prohibition on the use of sodium chloride, fertilizers, pesticides and other hazardous leachable materials.
6. This permit shall expire two years after filing with the Town Clerk unless substantial construction has commenced within that period.

THOMAS SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE